N. Y. Supp. 869. The New York court entertains the view that the power of an officer in taking depositions to commit for contempt is judicial in its nature. That the power to punish for contempt can be exercised by non-judicial tribunals and is not judicial in its nature as that word is used in the Constitution is undoubtedly the weight of authority; and the present case is in accordance with the better view. *DeCamp* v. *Archibald,* 50 Oh. St. 618; *Ex parte Jennings,* 60 Oh. St. 319, 54 N. E. 262; *Burtt* v. *Pyle,* 89 Ind. 398; *In re Huron,* 58 Kan. 152; *Ex parte McKee,* 18 Mo. 599; *Coleman* v. *Roberts,* 133 Ala. 323; contra, *Burns* v. *San Francisco Super. Ct.,* 140 Cal. 1.

CONTRACTS—EXCUSE FOR DELAY IN PERFORMANCE.—The Carnegie Steel Company contracted with the United States Government to manufacture armor-plate for the Ordnance Department in accordance with specifications contained in the contract. The contract provided for deductions from contract price for delay, but that some delays might be excused, viz., those which the Chief of Ordnance might determine to have been due to "unavoidable causes, such as fires, storms, labor strikes, actions of the United States, etc." It was found by the Carnegie Company, after it had commenced to manufacture the armor plate, that the process which it had supposed adequate for its production was in fact inadequate, and considerable delay was occasioned in experimenting before the proper process was discovered. The Government deducted for the delay and the Carnegie Company sued to recover the amount deducted, claiming that the cause of delay was "unavoidable" within the meaning of the clause above mentioned. The Goverment demurred to the petition. *Held*: Demurrer should be sustained. The cause of the delay was not one provided for, and was inexcusable. *Carnegie Steel Co.* v. *United States,* 240 U. S. 156, 36 Sup. Ct. 342.

The case is interesting because of the novelty of the contention of the plaintiff that because the ignorance under which it labored as to the inadequacy of the process was an ignorance shared by the whole world, the delay was unavoidable. The argument seems to have been that since this was the first attempt ever made to manufacture this kind of armor plate, and since it was reasonable to assume that the process they expected to use was a sufficient one, they contracted under a mistaken belief which fell within the class provided for as "unavoidable causes." The answer made by the court to this contention is that, though the ignorance was world-wide, it was an ignorance which might have been dispelled by proper experimenting before the contract was entered into, and the cause of delay was therefore avoidable. The rule followed is the well established one laid down in the case of *The Harriman,* 9 Wall. 161, 172, 19 L. Ed. 629, 633, that, "if what is agreed to be done is possible and lawful it must be done. Difficulty or improbability of accomplishing the undertaking will not avail the defendant." The principle is the same as that applied in excuses for non-performance. If the parties have not stipulated that the cause which has operated to prevent performance or to cause delay shall

excuse the delay or non-performance, the court will not interpolate such provision, because to do so would be to make a contract different from that the parties themselves have made. *Ptacek* v. *Pisa,* 231 Ill. 522, 83 N. E. 221, 14 L. R. A. (N. S.) 537; *Anderson* v. *May,* 50 Minn. 280, 36 Am. St. Rep. 642; 6 R. C. L. 997. It was held in *Nordyke & Marmon Co.* v. *Kehlor,* 155 Mo. 643, 56 S. W. 287, that where parties had contracted for the erection of a flour mill of a standard of efficiency which did not exist and could not be obtained, this would excuse performance, notwithstanding the person pleading such facts had the means of discovering the mistake and by diligence might have avoided it. While at first glance it would seem that this case is similar to the principal case, the distinguishing feature is that in the principal case it was possible to produce the product contracted for and the delay was avoidable, while in the *Nordyke* case the impossibility of producing the article contracted for amounted to a mutual mistake of fact which excused performance. Unavoidable cause as used in a contract in much the same connection as in the instant case has been defined to be such a cause as is inevitable and such that no human power can prevent. *City of Mankato* v. *Barber Asphalt Paving Co.,* 142 Fed. 329, 345, 73 C. C. A. 439. It is quite evident that the Carnegie Company fails in the case under consideration for the reason that it cannot show that the cause of delay was such an inevitable one, even though it was not caused through culpable negligence.

CORPORATIONS.—RIGHT OF A COURT TO PASS, OF ITS OWN MOTION, ON THE LEGAL STATUS OF A CORPORATION.—X company instituted a suit against the defendant because of the alleged infringement of certain patent rights. Before trial plaintiff company was allowed to intervene and prosecute the suit in lieu of X company, plaintiff company having just been organized for the purpose of possessing itself of and granting licenses that were owned by X company and two other companies. The object of this combination was to put an end to the numerous infringement suits which were constantly arising between the three companies, each of which disputed the patent rights of the other two. The plaintiff company was organized by five attorneys, who had absolutely no financial interest therein, and who immediately turned over their offices as directors to the representatives of the three companies more directly and vitally interested. *Held,* that the district court, in which the suit was instituted, committed error in deciding, of its own motion, that the plaintiff was not a corporation, and hence had no standing in court. *The Kardo Co.,* substituted for *The American Ball Bearing Co.* v. *Henry J. Adams,* dealing as *Reo Motor Sales Co.,* (C. C. A. 6th, 1916), — Fed. —.

This case is noteworthy, first, because of the exhaustive and comprehensive discussion of the modern doctrine of *de facto* corporations contained therein, and, secondly, because of the jurisdictional question involved. As to this latter point, it might appear that the decision is in direct conflict with the decision in the case of *The Great Southern Fire-Proof Hotel Co.* v. *Jones, et al.,* 177 U. S. 449. A careful examination, however, reveals the